IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

Cr.A.No.727 of 2000.

Date of Decision :26th November, 2007.

State of H.P. …Appellant.

Versus:

Rama Nand. …Respondent.

Coram:
The Hon'ble Mr.Justice Sanjay Karol, **Judge.**

Whether approved for judgment?[1]

For the appellant: Mr.Virender Verma, Addl. Advocate General. .

For Respondent. Mr.Vinay Thakur, Advocate.

Sanjay Karol, J(Oral).

The present appeal arises out of the judgment dated 27th June, 2000 passed by Sub Divisional Judicial Magistrate, Rampur in Criminal Case No.117-2 of 1998 titled as State of H.P. Vs. Rama Nand acquitting the accused of the charged offence under Sections 279, 337, 338 and 304-A of the Indian Penal Code.

As per the case of the prosecution, on 4th March 1998 at about 11.30 A.M., bus bearing No. HP-06-2046 was being driven by the accused at a high speed on its way to Pathbangla from Rampur. Shri Jai Parkash and Dhani Ram who were standing on the road at the relevant time and place were hit with the rear window of the bus as a result of which both of them fell on the ground below the road and sustained

[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

injuries. F.I.R. No. 73/98 (Ext.PW-8/A) was lodged with the police Station, Rampur under sections 279, 336 and 337 of the Indian Penal Code. Both Jai Parkash and Dhani Ram were rushed to hospital. Jai Parkash succumbed to his injuries on the way. His M.L.C. Ext.PB and post mortem report Ext.PC. are on record. Dhani Ram was got medically examined vide report Ext.PA.

On the completion of the investigation, the challan was presented in the Court for trial and the notice of accusation was put to the accused under Sections 279, 337, 338 and 304 I.P.C. The accused pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined nine witnesses and the statement of the accused under Section 313 Cr.P.C. was also recorded where the defence taken was that Dalak Raj a passenger had opened the rear window of the bus as a result of which pedestrians felled down and sustained injuries.

The court below,after examining the material on record including the statements of the parties, arrived at the conclusion that hypothesis of innocence of the accused existed on record and the prosecution could not prove its case beyond reasonable doubt. The accused was accordingly acquitted .

Ram Singh (PW-1), Rajesh (PW-2) and Ajit Tirki (PW-3) are the spot witnesses. Undoubtedly, they have

proved that the accused was driving the vehicle in question at the relevant time and Dhani Ram and deceased-Jai Parkash were hit by the bus as a result of which they fell down and sustained injuries. However, injured Dhani Ram has not been examined as a witness. The Doctor who medically examined the injured has also not been examined. M.L.Cs. Ext.PA, Ext. PB and post mortem report Ext.PC have been tendered in evidence by the Public Prosecutor. Dhani Ram has undoubtedly sustained grievous injuries. Through the statements of Shri Dewa Sain (PW-4) and Sohan Singh (PW-5), it has been proved that the accused was driving the bus at the relevant time. The bus was mechanically examined and the mechanical report Ext.PW-6/A has been proved on record through the statement of Charan Dass (PW-6). Ishwar Singh (PW-8) and Amar Chand (PW-9) are the police officials who have proved various documents on record and have supported the case of the prosecution.

However, through the statement of Dalak Raj (PW-7) as also the statement of Dewa Sain (PW-4) it has come on record that just at the place of occurrence, the accused had slow down the speed of the bus when PW-7 after opening the rear door get down from the bus and rushed in the opposite direction. The door (window) of the bus hit Dhani Ram and Jai Parkash as a result both of them fell down and sustained injuries. Dewa Sain (PW-4) has admitted that PW-7 had opened the rear door of the bus which had hit the

injured persons. PW-7 and also the officials of the transport department have recorded that the cause of occurrence was the opening of the rear door by the passenger, which hit the injured persons. Ext.DA is the statement of PW-7 recorded at the time of the accident from which it is clear that the accused was not negligent and no fault can be attributable to him. Even PW-1 has admitted in his cross-examination that Dhani Ram sustained injuries as he was hit by the rear door of the bus which was opened by the passenger. Thus the hypothesis leading to the innocence of the accused is established on the record.

In this view of the matter, it cannot be said that the prosecution has been able to prove its case beyond reasonable doubt particularly when there is hypothesis of innocence, clearly borne out though the deposition of PW-1, PW-4 ,PW-7 and also Ext.DA.

The Court below has acquitted the accused of the charged offence. The material on record has been appreciated in its entirety. There is nothing on record to show any perversity. In the facts and circumstances of the case, I see no reason to interfere with the judgment of the trial Court. The appeal is accordingly dismissed. The bail bonds are discharged.

(Sanjay Karol),
Judge.

November 26, 2007(R)